

1 SENATE BILL 468

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 John C. Ryan

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10 AN ACT

11 RELATING TO CRIMINAL SENTENCING; ELIMINATING THE POSSIBILITY OF
12 RELEASE OR PAROLE FOR PERSONS SENTENCED TO LIFE IMPRISONMENT.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 Section 1. Section 31-18-23 NMSA 1978 (being Laws 1994,
16 Chapter 24, Section 2, as amended) is amended to read:

17 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY
18 LIFE IMPRISONMENT--EXCEPTION.--

19 A. When a defendant is convicted of a third violent
20 felony, and each violent felony conviction is part of a
21 separate transaction or occurrence, and at least the third
22 violent felony conviction is in New Mexico, the defendant
23 shall, in addition to the sentence imposed for the third
24 violent conviction when that sentence does not result in death,
25 be punished by a sentence of life imprisonment. [~~The life~~

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1 ~~imprisonment sentence shall be subject to parole pursuant to~~
2 ~~the provisions of Section 31-21-10 NMSA 1978.]~~

3 B. The sentence of life imprisonment shall be
4 imposed after a sentencing hearing, separate from the trial or
5 guilty plea proceeding resulting in the third violent felony
6 conviction, pursuant to the provisions of Section 31-18-24 NMSA
7 1978.

8 C. For the purpose of this section, a violent
9 felony conviction incurred by a defendant before ~~[he]~~ the
10 defendant reaches the age of eighteen shall not count as a
11 violent felony conviction.

12 D. When a defendant has a felony conviction from
13 another state, the felony conviction shall be considered a
14 violent felony for the purposes of the Criminal Sentencing Act
15 if that crime would be considered a violent felony in New
16 Mexico.

17 E. As used in the Criminal Sentencing Act:

18 (1) "great bodily harm" means an injury to the
19 person that creates a high probability of death or that causes
20 serious disfigurement or that results in permanent loss or
21 impairment of the function of any member or organ of the body;
22 and

23 (2) "violent felony" means:

24 (a) murder in the first or second
25 degree, as provided in Section 30-2-1 NMSA 1978;

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1 (b) shooting at or from a motor vehicle
2 resulting in great bodily harm, as provided in Subsection B of
3 Section 30-3-8 NMSA 1978;

4 (c) kidnapping resulting in great bodily
5 harm inflicted upon the victim by [~~his~~] the victim's captor, as
6 provided in Subsection B of Section 30-4-1 NMSA 1978; [~~and~~]

7 (d) criminal sexual penetration, as
8 provided in Subsection C or Paragraph (5) or (6) of Subsection
9 D of Section 30-9-11 NMSA 1978; and

10 (e) robbery while armed with a deadly
11 weapon resulting in great bodily harm as provided in Section
12 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA
13 1978."

14 Section 2. Section 31-18-25 NMSA 1978 (being Laws 1996,
15 Chapter 79, Section 1, as amended) is amended to read:

16 "31-18-25. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
17 MANDATORY LIFE IMPRISONMENT--EXCEPTION.--

18 A. When a defendant is convicted of a second
19 violent sexual offense, and each violent sexual offense
20 conviction is part of a separate transaction or occurrence, and
21 at least the second violent sexual offense conviction is in New
22 Mexico, the defendant shall, in addition to the punishment
23 imposed for the second violent sexual offense conviction, be
24 punished by a sentence of life imprisonment. [~~The life~~
25 ~~imprisonment sentence shall be subject to parole pursuant to~~

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1 ~~the provisions of Section 31-21-10 NMSA 1978.~~

2 ~~B. Notwithstanding the provisions of Subsection A~~
3 ~~of this section, when a defendant is convicted of a second~~
4 ~~violent sexual offense, and each violent sexual offense~~
5 ~~conviction is part of a separate transaction or occurrence, and~~
6 ~~the victim of each violent sexual offense was less than~~
7 ~~thirteen years of age at the time of the offense, and at least~~
8 ~~the second violent sexual offense conviction is in New Mexico,~~
9 ~~the defendant shall be punished by a sentence of life~~
10 ~~imprisonment without the possibility of parole.~~

11 ~~G.]~~ B. The sentence of life imprisonment shall be
12 imposed after a sentencing hearing, separate from the trial or
13 guilty plea proceeding resulting in the second violent sexual
14 offense conviction, pursuant to the provisions of Section
15 31-18-26 NMSA 1978.

16 ~~[D.]~~ C. For the purposes of this section, a violent
17 sexual offense conviction incurred by a defendant before [~~he~~]
18 the defendant reaches the age of eighteen shall not count as a
19 violent sexual offense conviction.

20 ~~[E.]~~ D. When a defendant has a felony conviction
21 from another state, the felony conviction shall be considered a
22 violent sexual offense for the purposes of the Criminal
23 Sentencing Act if the crime would be considered a violent
24 sexual offense in New Mexico.

25 ~~[F.]~~ E. As used in the Criminal Sentencing Act,

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1 "violent sexual offense" means:

2 (1) criminal sexual penetration in the first
3 degree, as provided in Subsection C of Section 30-9-11 NMSA
4 1978; or

5 (2) criminal sexual penetration in the second
6 degree, as provided in Subsection D of Section 30-9-11 NMSA
7 1978."

8 Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,
9 Chapter 28, Section 1, as amended) is amended to read:

10 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

11 A. An inmate of an institution who was sentenced to
12 life imprisonment as the result of the commission of a capital
13 felony, who was sentenced to life imprisonment as the result of
14 a conviction for a first degree felony resulting in the death
15 of a child, who was convicted of three violent felonies and
16 sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978
17 or who was convicted of two violent sexual offenses and
18 sentenced pursuant to [~~Subsection A of Section~~] Sections
19 31-18-25 NMSA 1978 and [~~Section~~] 31-18-26 NMSA 1978 [~~becomes~~
20 ~~eligible for a parole hearing after he has served thirty years~~
21 ~~of his sentence. Before ordering the parole of an inmate~~
22 ~~sentenced to life imprisonment, the board shall:~~

23 (1) ~~interview the inmate at the institution~~
24 ~~where he is committed;~~

25 (2) ~~consider all pertinent information~~

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1 ~~concerning the inmate, including:~~

2 ~~(a) the circumstances of the offense;~~

3 ~~(b) mitigating and aggravating~~
4 ~~circumstances;~~

5 ~~(c) whether a deadly weapon was used in~~
6 ~~the commission of the offense;~~

7 ~~(d) whether the inmate is a habitual~~
8 ~~offender;~~

9 ~~(e) the reports filed under Section~~
10 ~~31-21-9 NMSA 1978; and~~

11 ~~(f) the reports of such physical and~~
12 ~~mental examinations as have been made while in an institution;~~

13 ~~(3) make a finding that a parole is in the~~
14 ~~best interest of society and the inmate; and~~

15 ~~(4) make a finding that the inmate is able and~~
16 ~~willing to fulfill the obligations of a law-abiding citizen.~~

17 ~~If parole is denied, the inmate sentenced to life~~
18 ~~imprisonment shall again become entitled to a parole hearing at~~
19 ~~two-year intervals. The board may, on its own motion, reopen~~
20 ~~any case in which a hearing has already been granted and parole~~
21 ~~denied.~~

22 ~~B. Unless the board finds that it is in the best~~
23 ~~interest of society and the parolee to reduce the period of~~
24 ~~parole, a person who was convicted of a capital felony shall be~~
25 ~~required to undergo a minimum period of parole of five years.~~

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1 ~~During the period of parole, the person shall be under the~~
2 ~~guidance and supervision of the board] is not eligible for~~
3 ~~parole and shall remain incarcerated for the entirety of the~~
4 ~~inmate's natural life.~~

5 [G.] B. Except for sex offenders as provided in
6 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a
7 first, second or third degree felony and who has served the
8 sentence of imprisonment imposed by the court in an institution
9 designated by the corrections department shall be required to
10 undergo a two-year period of parole. An inmate who was
11 convicted of a fourth degree felony and who has served the
12 sentence of imprisonment imposed by the court in an institution
13 designated by the corrections department shall be required to
14 undergo a one-year period of parole. During the period of
15 parole, the person shall be under the guidance and supervision
16 of the board.

17 [~~D. Every~~] C. A person [~~while~~] who is on parole
18 shall remain in the legal custody of the institution from which
19 [~~he~~] the person was released, but shall be subject to the
20 orders of the board. The board shall furnish to each inmate as
21 a prerequisite to [~~his~~] the inmate's release under its
22 supervision a written statement of the conditions of parole
23 that shall be accepted and agreed to by the inmate as evidenced
24 by [~~his~~] the inmate's signature affixed to a duplicate copy to
25 be retained in the files of the board. The board shall also

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1 require as a prerequisite to release the submission and
2 approval of a parole plan. If an inmate refuses to affix [~~his~~]
3 the inmate's signature to the written statement of the
4 conditions of [~~his~~] the inmate's parole or does not have an
5 approved parole plan, [~~he~~] the inmate shall not be released and
6 shall remain in the custody of the institution in which [~~he~~]
7 the inmate has served [~~his~~] the inmate's sentence, excepting
8 parole, until such time as the period of parole [~~he~~] the inmate
9 was required to serve, less meritorious deductions, if any,
10 expires, at which time [~~he~~] the inmate shall be released from
11 that institution without parole, or until such time that [~~he~~]
12 the inmate evidences [~~his~~] acceptance and agreement to the
13 conditions of parole as required or receives approval for [~~his~~]
14 the inmate's parole plan or both. Time served from the date
15 that an inmate refuses to accept and agree to the conditions of
16 parole or fails to receive approval for [~~his~~] the inmate's
17 parole plan shall reduce the period, if any, to be served under
18 parole at a later date. If the district court has ordered that
19 the inmate make restitution to a victim as provided in Section
20 31-17-1 NMSA 1978, the board shall include restitution as a
21 condition of parole. The board shall also personally apprise
22 the inmate of the conditions of parole and [~~his~~] the inmate's
23 duties relating thereto.

24 [~~E.~~] D. When a person on parole has performed the
25 obligations of [~~his~~] the person's release for the period of

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1 parole provided in this section, the board shall make a final
2 order of discharge and issue [~~him~~] the person a certificate of
3 discharge.

4 [~~F.~~] E. Pursuant to the provisions of Section
5 31-18-15 NMSA 1978, the board shall require the inmate as a
6 condition of parole:

7 (1) to pay the actual costs of [~~his~~] parole
8 services to the adult probation and parole division of the
9 corrections department for deposit to the corrections
10 department intensive supervision fund not exceeding one
11 thousand eight hundred dollars (\$1,800) annually to be paid in
12 monthly installments of not less than twenty-five dollars
13 (\$25.00) and not more than one hundred fifty dollars (\$150), as
14 set by the appropriate district supervisor of the adult
15 probation and parole division, based upon the financial
16 circumstances of the defendant. The defendant's payment of the
17 supervised parole costs shall not be waived unless the board
18 holds an evidentiary hearing and finds that the defendant is
19 unable to pay the costs. If the board waives the defendant's
20 payment of the supervised parole costs and the defendant's
21 financial circumstances subsequently change so that the
22 defendant is able to pay the costs, the appropriate district
23 supervisor of the adult probation and parole division shall
24 advise the board and the board shall hold an evidentiary
25 hearing to determine whether the waiver should be rescinded;

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1 and

2 (2) to reimburse a law enforcement agency or
3 local crime stopper program for the amount of any reward paid
4 by the agency or program for information leading to ~~[his]~~ the
5 inmate's arrest, prosecution or conviction.

6 ~~[G.]~~ F. The provisions of this section shall
7 apply to all inmates except geriatric, permanently
8 incapacitated and terminally ill inmates eligible for the
9 medical and geriatric parole program as provided by the
10 Parole Board Act."

11 Section 4. REPEAL.--Section 31-18-14.1 NMSA 1978
12 (being Laws 2001, Chapter 128, Section 1) is repealed.

13 Section 5. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2007.